



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-SC-17-0073; SC18-985-1A FR]

**Marketing Order Regulating the Handling of Spearmint Oil
Produced in the Far West; Revision of the Salable Quantity
and Allotment Percentage for Class 3 (Native) Spearmint Oil
for the 2018-2019 Marketing Year**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to increase the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2018-2019 marketing year. The Committee recommended this action to ensure that the Native spearmint oil market is adequately supplied through the end of the current marketing year.

DATES: Effective [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and

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Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah). Part 985 (referred to as "the Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of spearmint oil producers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the Order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2018-2019 marketing year, which ends on May 31, 2019.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2018-2019 marketing year. The salable quantity and allotment percentage for Native spearmint oil for the 2018-2019 marketing year was initially established at 1,307,947 pounds and 53 percent, respectively, in a final rule published in the *Federal Register* on July 24, 2018 (83 FR 34935). This rule increases the Native

spearmint oil salable quantity from 1,307,947 pounds to 1,431,350 pounds and the allotment percentage from 53 percent to 58 percent.

Under the volume regulation provisions of the Order, the Committee meets each year to adopt a marketing policy for the ensuing year. When the Committee's marketing policy considerations indicate a need to limit the quantity of spearmint oil available to the market to establish or maintain orderly marketing conditions, the Committee submits a recommendation to the Secretary of Agriculture for volume regulation.

Volume regulation under the Order is effectuated through the establishment of a salable quantity and allotment percentage applicable to each class of spearmint oil handled in the production area during a marketing year. The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each class of oil is derived by dividing the salable quantity by the total industry allotment base for that same class of oil. The total industry allotment base is the aggregate of all allotment base held individually by

producers. Producer allotment base is the quantity of each class of spearmint oil that the Committee has determined is representative of a producer's spearmint oil production. Each producer is allotted a pro rata share of the total salable quantity of each class of spearmint oil each marketing year. Each producer's annual allotment is determined by applying the allotment percentage to the producer's individual allotment base for each applicable class of spearmint oil.

The full Committee met on October 25, 2017, to consider its marketing policy for the 2018-2019 marketing year. At that meeting, the Committee determined that marketing conditions indicated a need for volume regulation of both classes of spearmint oil (Scotch and Native) for the 2018-2019 marketing year. The Committee recommended salable quantities of 760,660 pounds and 1,307,947 pounds, and allotment percentages of 35 percent and 53 percent, respectively, for Scotch and Native spearmint oil. A proposed rule to that effect was published in the *Federal Register* on April 6, 2018 (83 FR 14766). Comments on the proposed rule were solicited from interested persons until June 5, 2018. No comments were received. Subsequently, a

final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2018-2019 marketing year was published in the *Federal Register* on July 24, 2018 (83 FR 34935).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52, the full eight-member Committee met again on July 18, 2018, to evaluate the current year's volume control regulation. At the meeting, the Committee assessed the current market conditions for spearmint oil in relation to the salable quantities and allotment percentages established for the 2018-2019 marketing year. The Committee considered a number of factors, including the current and projected supply and the estimated future demand for all classes of spearmint oil. The Committee determined that the established salable quantity and allotment percentage in effect for Native spearmint oil for the 2018-2019 marketing year should be increased to accommodate a rise in market demand for that class of spearmint oil.

At the July 18, 2018, meeting, the Committee staff reported that estimated demand for Native spearmint oil for the 2018-2019 marketing year was greater than previously

anticipated. The Committee initially estimated the trade demand for Native spearmint oil for the 2018-2019 marketing year to be 1,306,625. In a unanimous vote, the Committee revised its estimated trade demand for the 2018-2019 marketing year from 1,306,625 pounds to 1,400,000 pounds. In addition, the Committee recommended increasing the 2018-2019 marketing year Native spearmint oil salable quantity from 1,307,947 pounds to 1,357,315 pounds and the allotment percentage from 53 percent to 55 percent. The motion to recommend to the Secretary to increase the salable quantity and allotment percentage also passed unanimously.

A proposed rule concerning this action was published in the *Federal Register* on October 9, 2018 (83 FR 50527). A 60-day comment period ending December 10, 2018, was provided to allow interested persons to respond to the proposal.

During the proposed rule comment period, the Committee met again on October 17, 2018, to further discuss the changing Native spearmint oil market environment. The Order requires that producers and handlers report to the Committee all production and disposition of spearmint oil within the Order's production area. Using the information

collected for the 2018-2019 and prior marketing years, the Committee staff reported that current marketing year trade statistics indicate demand for Native spearmint oil is greater than previously estimated. Further, the industry consensus of those in attendance at the meeting was that trade demand should remain strong throughout the year.

As such, in a unanimous action, the Committee again revised its 2018-2019 marketing year estimated trade demand for Native spearmint oil from 1,400,000 pounds to 1,450,000 pounds. Accordingly, the Committee also voted unanimously to recommend to USDA, via a public comment on the proposed rule (83 FR 50527), to increase the salable quantity and allotment percentage to 1,431,350 pounds and 58 percent, respectively. These numbers were derived by recalculating the salable quantity and allotment percentage to incorporate the increase in Native allotment base revealed by the updated industry data. These calculations are fully discussed below. The Committee recommended this quantity to fully supply anticipated demand (1,450,000 pounds) for the rest of the 2018-2019 marketing year and to carry-out an estimated 8,005 pounds of salable oil into the 2019-2020 marketing year.

After receiving the Committee's recommendation to amend the original proposal (submitted via public comment) and the other comments submitted during the comment period, USDA reviewed the updated industry information on the price, supply, and demand of Native spearmint oil supplied by the Committee and determined that additional oil, in excess of the level specified in the proposed rule, is necessary to fully supply the market for the 2018-2019 marketing year. As such, this final rule makes additional amounts of Native spearmint oil available to the market by increasing the salable quantity and allotment percentage previously established under the Order for the 2018-2019 marketing year. This rule increases the Native spearmint oil salable quantity by 123,403 pounds to 1,431,350 pounds and raises the allotment percentage 5 percentage points to 58 percent.

The additional Native spearmint oil will be made available from the release of oil held by producers in the reserve pool. As of May 31, 2018, the Committee records show that the reserve pool for Native spearmint oil contained 1,020,583 pounds of oil. This action will help reduce the quantity of Native spearmint oil held in

reserve. The Committee considers the level of Native spearmint oil currently held in reserve to be excessive relative to market conditions.

The increased quantity of Native spearmint oil (123,403 pounds) that will be made available to the market as a result of this rule will ensure that market demand is fully satisfied in the current year and approximately 8,005 pounds of Native spearmint oil salable inventory will be available to carry-over for the start of the 2019-2020 marketing year, which begins on June 1, 2019.

In making the recommendation to increase the salable quantity and allotment percentage of Native spearmint oil for the 2018-2019 marketing year, the Committee considered newly gathered price, supply, and demand information collected through industry producer and handler reports and comments provided by those in attendance at the October 17, 2018, meeting. USDA has also reviewed the newly reported data and has concluded that the proposed increase would meet the needs of the industry.

This rule increases the 2018-2019 marketing year Native spearmint oil salable quantity by 123,403 pounds to a total of 1,431,350 pounds. Actual sales of Native

spearmint oil for the 2017-2018 marketing year totaled 1,565,515 pounds. The 5-year average of Native spearmint oil sales is 1,365,377 pounds.

The Committee estimates that this action will result in 8,005 pounds of salable Native spearmint oil being carried into the 2019-2020 marketing year which begins June 1, 2019. While 8,005 pounds is a relatively low quantity of salable Native spearmint oil to begin the marketing year, reserve pool oil could be released into the market under a future relaxation of the volume regulation should it be necessary to adequately supply the market prior to the beginning of the 2019-2020 marketing year. The Committee estimates that a total of 1,082,257 pounds of Native spearmint oil (1,020,583 currently in reserve and an estimated 61,674 pounds of excess oil produced during the 2018 crop year) will be available from the reserve pool, if needed.

As mentioned previously, when the 2018-2019 marketing policy statement was drafted, handlers estimated the demand for Native spearmint oil for the 2018-2019 marketing year to be 1,306,625 pounds. The Committee's initial recommendation for the establishment of the Native

spearmint oil salable quantity and allotment percentage for the 2018-2019 marketing year was based on that estimate. The Committee did not anticipate the level of demand that the Native spearmint oil market is currently experiencing and did not account for it when the marketing policy for the 2018-2019 marketing year was adopted.

At the July 18, 2018, meeting, the Committee revised its estimate of Native spearmint oil trade demand to 1,400,000 pounds. The Committee further revised its estimate of trade demand to 1,450,000 at its October 17, 2018, meeting. The Committee believes that the supply of Native spearmint oil available to the market under the initially established salable quantity and allotment percentage would be insufficient to satisfy the current level of demand for oil at reasonable price levels. The Committee further believes that the increase in the salable quantity and allotment percentage established by this action is vital to ensuring an adequate supply of Native spearmint oil is available to the market moving forward.

The Committee's stated intent in the use of the Order's volume control regulation is to keep adequate supplies of spearmint oil available to meet market needs

and to maintain orderly marketing conditions. With that in mind, the Committee developed its recommendation for increasing the Native spearmint oil salable quantity and allotment percentage for the 2018-2019 marketing year based on the information discussed above, as well as the summary data outlined below.

(A) *Initial estimated 2018-2019 Native allotment base - 2,467,825 pounds.* This is the allotment base estimate upon which the original 2018-2019 marketing year salable quantity and allotment percentage was based.

(B) *Revised 2018-2019 Native allotment base - 2,467,845 pounds.* This is 20 pounds more than the initial estimated allotment base of 2,467,825 pounds. The difference is the result of annual adjustments made to the allotment base at the beginning of the marketing year in accordance with the provisions of the Order.

(C) *Initial 2018-2019 Native allotment percentage - 53 percent.* This was unanimously recommended by the Committee on October 25, 2017.

(D) *Initial 2018-2019 Native salable quantity - 1,307,947 pounds.* This figure is 53 percent of the

original estimated 2018-2019 marketing year allotment base of 2,467,825 pounds.

(E) *Adjusted initial 2018-2019 Native salable quantity - 1,307,958 pounds.* This figure reflects the salable quantity actually available at the beginning of the 2018-2019 marketing year. This quantity is derived by applying the initial 53 percent allotment percentage to the revised allotment base of 2,467,845.

(F) *Revision to the 2018-2019 Native salable quantity and allotment percentage:*

(1) *Proposed increase in the 2018-2019 Native allotment percentage - 2 percentage points.* The Committee initially recommended an increase of 2 percentage points over the initial Native allotment percentage at its July 17, 2018, meeting.

(2) *Proposed 2018-2019 Native allotment percentage - 55 percent.* This number was derived by adding the increase of 2 percentage points to the initially established 2018-2019 allotment percentage of 53 percent.

(3) *Increase in the 2018-2019 Native allotment percentage established by this final rule - a total of 5 percentage points.* The Committee initially recommended an

increase of 2 percentage points over the initial Native allotment percentage at its July 17, 2018, meeting. At its October 17, 2018, meeting, the Committee voted unanimously to recommend to USDA, via a public comment on the proposed rule (83 FR 50527), to increase the salable quantity and allotment percentage to 1,431,350 pounds and 58 percent, respectively. Based on comments received, including the Committee's recommendation, and a thorough review of all information presented, USDA is increasing the Native spearmint oil allotment percentage by a total of 5 percentage points.

(4) *Final revised 2018-2019 Native allotment percentage - 58 percent.* This number was derived by adding the increase of 5 percentage points to the initially established 2018-2019 allotment percentage of 53 percent.

(5) *Final revised 2018-2019 Native salable quantity - 1,431,350 pounds.* This amount is 58 percent of the revised 2018-2019 allotment base of 2,467,845 pounds.

(6) *Computed increase in the 2018-2019 Native salable quantity as a result of this revision - 123,403 pounds.* This figure represents the difference between the initially established salable quantity of 1,307,947 pounds

and the increased salable quantity of 1,431,350 pounds effectuated by this final rule.

Scotch spearmint oil is also regulated by the Order. As mentioned previously, a salable quantity and allotment percentage for Scotch spearmint oil for the 2018-2019 marketing year was established in a final rule published in the *Federal Register* on July 24, 2018 (83 FR 34935). At the July 18, 2018, meeting, the Committee considered the projected production, inventory, and marketing conditions for Scotch spearmint oil for the 2018-2019 marketing year. After receiving reports from the Committee staff and comments from the industry, the consensus of the Committee was that the established salable quantity and allotment percentage for Scotch spearmint oil was appropriate for the current market conditions. Therefore, the Committee recommended no further action with regard to Scotch spearmint oil for the 2018-2019 marketing year.

This final rule relaxes the volume regulation of Native spearmint oil and will allow producers to meet market demand and improve producer returns. In conjunction with the issuance of this rule, the Committee's revised

marketing policy statement for the 2018-2019 marketing year has been reviewed by USDA.

The increase in the Native spearmint oil salable quantity and allotment percentage is expected to account for the anticipated market needs for that class of oil. In determining anticipated market needs, the Committee considered changes and trends in historical sales, production, and demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the Order, and approximately 43 producers of Scotch spearmint oil and approximately 95 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that only two of the eight handlers regulated by the Order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 12 of the 43 Scotch spearmint oil producers and 31 of the 95 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, the majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the spearmint oil industry to fully supply spearmint oil

markets while avoiding the negative consequences of over-supplying these markets. Without volume control regulation, the supply and price of spearmint oil would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and drive end users to source flavoring needs from other markets, potentially causing long-term economic damage to the domestic spearmint oil industry. The Order's volume control provisions have been successfully implemented in the domestic spearmint oil industry since 1980 and provide benefits for producers, handlers, manufacturers, and consumers.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2018-2019 marketing year, which ends May 31, 2019. The 2018-2019 marketing year Native spearmint oil salable quantity was initially established at 1,307,947 pounds, and the allotment percentage initially set at 53 percent, in a final rule published in the *Federal Register* on July 24, 2018 (83 FR 34935). This final rule

increases the Native spearmint oil salable quantity to 1,431,350 pounds and the allotment percentage to 58 percent.

Based on the information and market projections presented at the July 18 and October 17, 2018, meetings, the Committee considered several alternatives to this increase. The Committee considered leaving the salable quantity and allotment percentage unchanged and also considered other potential levels of increase. The Committee initially recommended increasing the salable quantity to 1,357,315 pounds and the allotment percentage to 55 percent. After further consideration, the Committee recommended, via a comment submitted during the rulemaking process, establishing the salable quantity at 1,431,350 pounds and the allotment percentage at 58 percent.

The Committee reached its final recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information and input from all interested industry participants. The Committee believes that the volume regulation levels effectuated herein will achieve the desired objectives. Without the increase, the

Committee believes the industry will not be able to satisfactorily meet market demand at reasonable prices.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Specialty Crops. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they will be submitted to OMB for approval.

This final rule relaxes the volume regulation requirements established under the Order for the 2018-2019 marketing year. This action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's July 18 and October 17, 2018, meetings were widely publicized throughout the Far West spearmint oil industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. The meetings were public, and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the *Federal Register* on October 9, 2018 (83 FR 50527). Copies of the proposed rule were sent via email to all Committee members and Far West spearmint oil handlers. The proposed rule was made available through the internet by USDA and the Office of the *Federal Register*. A 60-day comment period ending December 10, 2018, was provided to allow interested persons to respond to the proposal. Three comments were received, including a comment submitted by the Committee manager on behalf of the Committee.

All three comments submitted were in support of increasing the salable quantity and allotment percentage of Native spearmint oil for the 2018-2019 marketing year.

Further, the commenters recommended increasing the salable quantity and allotment percentage to a higher level than the one published in the proposed rule. Specifically, the commenters recommended establishing a salable quantity and allotment percentage of 1,431,350 pounds and 58 percent, respectively. The increased salable quantity and allotment percentage level recommended by the commenters for Native spearmint oil was 74,035 pounds and 3 percentage points higher than the level of increase proposed in the proposed rule. USDA considered the comments and updated Committee price, production and demand data submitted, and agrees that the recommended increased volume regulation is justified by current market conditions and is consistent with the requirements of the Order. Therefore, the salable quantity and allotment percentage, as proposed, have been revised accordingly in this final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the

previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

USDA has determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the *Federal Register*. This final rule increases the saleable quantity and allotment percentage of Native spearmint oil for the 2018-2019 marketing year. Because this final rule relaxes the volume regulation requirements established under the Order for Native spearmint oil for the 2018-2019 marketing year, good cause exists to not delay the effective date of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

**PART 985 - MARKETING ORDER REGULATING THE HANDLING OF
SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 985.233, revise paragraph (b) to read as follows:

§ 985.233 Salable quantities and allotment percentages.

* * * * *

(b) Class 3 (Native) oil - a salable quantity of 1,431,350 pounds and an allotment percentage of 58 percent.

Dated: April 18, 2019.

Bruce Summers,
Administrator,
Agricultural Marketing Service.

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